

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

MICHAEL P. AND SHELLIE GILMOR,
ET AL.,

Plaintiffs,

vs.

PREFERRED CREDIT CORPORATION,
ET AL.,

Defendants.

Case No. 10-0189-CV-W-ODS

PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs Michael P. Gilmor, Shellie Gilmor, Michael Harris, Lois A. Harris, William Hudson, Debra Mooney, Derrick Rockett, Alethia Rockett, James Woodward and Kathleen Woodward (the "Named Plaintiffs"), as representatives on behalf of the proposed "Wendover Settlement Class" defined below, hereby move the Court for its *Order and Final Judgment Approving Class Action Settlement and Certifying a Class for Settlement Purposes* approving the class action settlement with Wendover Financial Services Corporation ("Wendover") which is defined in the parties' December 14, 2012 Settlement and Release Agreement (**Exhibit 1**) as the "Settling Defendants" and a *Final Judgment* only with respect to the claims against Settling Defendants.

The class action settlement certainly satisfies the legal standard that it be "fair, adequate and reasonable" as to the Wendover Settlement Class as Rule 23(e) requires, and it should be given final approval by the Court. Accordingly, for the reasons set forth below and in the concurrently filed *Suggestions in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement*, which is incorporated by reference herein, Plaintiffs ask the Court to make the following findings and conclusions and to order the following:

A. Certification of Settlement Class

1. That the following “Settlement Class” should be finally certified pursuant to Federal Rule 23 for the purpose of the class action settlement:

All persons who, on or after June 27, 1994, obtained a “Second Mortgage Loan,” as defined in Mo.Rev.Stat. § 408.231.1, that was secured in whole or in part by a mortgage or a deed of trust on residential real property located in the state of Missouri, that was originated by Preferred Credit Corporation (f/k/a T.A.R. Preferred Mortgage Corporation), and that was serviced by Wendover Financial Services Corporation, and who did not timely exercise their right and option to opt out and exclude themselves from the litigation class that the Circuit Court of Clay County, Missouri certified on January 2, 2003, in *Gilmor v. Preferred Credit Corporation*, Case No. CV100-4263-CC.

Settlement Agreement (Exhibit 1), at ¶3(a).

2. That the Wendover Settlement Class satisfies the requirements of Rule 23(a) and 23(b)(3) because:

- a. The above described Class is so numerous that the joinder of all members is impracticable;
- b. There are questions of law or fact common to the Class;
- c. The claims of the Representative Plaintiffs are typical of the claims of the Class;
- d. The Representative Plaintiffs and their counsel have fairly and adequately protected the interests of the Class.

And further, that:

- e. The questions of law or fact common to the members of the Class, and which are relevant for settlement purposes, predominate over the questions affecting only individual members; and
- f. That certification of the Class is superior to other available methods for the fair and efficient adjudication of this controversy.

3. That Plaintiffs Michael P. Gilmor, Shellie Gilmor, Michael Harris, Lois A. Harris, William Hudson, Debra Mooney, Derrick Rockett, Alethia Rockett, James Woodward and Kathleen Woodward should be appointed as representatives for the Wendover Settlement Class;

4. That the following lawyers should be appointed as counsel to the Settlement Class:

R. Frederick Walters, Esq.
Kip D. Richards, Esq.
David M. Skeens, Esq.
J. Michael Vaughan, Esq.
Garrett M. Hodes, Esq.
WALTERS BENDER STROHBEHN & VAUGHAN, P.C.
2500 City Center Square
1100 Main Street
Kansas City, Missouri 64105

B. Notice of the Settlement to the Class Members

5. That individual notice complying with Federal Rule 23(c)(2)(B) and (e) was sent to each member of the Settlement Class and that this notice was the “best notice practicable under the circumstances” and satisfied the requirements of due process and Federal Rule 23.

6. At the time of filing this motion, that **no** Class Member (1) excluded himself or herself from the Settlement Class; (2) objected to the settlement; (3) sought to intervene in the lawsuit; or (4) entered their appearance through counsel.

7. That all Settlement Class Members are identified in Schedule A to the Settlement Agreement and shall be bound by the Settlement Agreement, including the Releases in the Settlement Agreement.

C. Final Approval of the Settlement

8. That the Settlement, as embodied in the Settlement Agreement, attached hereto in its entirety as **Exhibit 1**, is fair, reasonable, and adequate.

9. That the Settling Defendants shall pay \$100,000.00 to the Settlement Class, to be distributed by Class Counsel in accordance with the Settlement Agreement, and to each Settlement Class Member, in accordance with Schedule A to the Settlement Agreement.

10. That all other requirements of statute, rule and constitutional principles necessary to effectuate the Settlement have been met and satisfied, and that the Court shall grant final approval to the class action settlement.

Dated: April 18, 2013

Respectfully submitted,

WALTERS BENDER STROHBEHN
& VAUGHAN, P.C.

By: R. Frederick Walters

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**ATTORNEYS FOR PLAINTIFFS
AND CLASS COUNSEL**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this the 18th day of April, 2013, I electronically filed the above and foregoing document with the Clerk of Court of the Western District of Missouri using the Court's ECF system, which will send notification of said filing to all counsel of record who are ECF participants.

/s/ R. Frederick Walters